

AMENDED IN ASSEMBLY JUNE 30, 2004

AMENDED IN ASSEMBLY JUNE 17, 2004

AMENDED IN SENATE MAY 4, 2004

AMENDED IN SENATE MARCH 31, 2004

SENATE BILL

No. 1819

Introduced by Senator Ashburn

February 20, 2004

An act to amend Sections 4514 and 5328 of the Welfare and Institutions Code, relating to confidential information.

LEGISLATIVE COUNSEL'S DIGEST

SB 1819, as amended, Ashburn. Mental health and developmental services: confidential information.

Existing law makes all information and records obtained in the course of providing intake assessment and services under statutes relating to services for persons with developmental disabilities and persons with mental illness confidential, and permits disclosure only under prescribed conditions, including, but not limited to, the courts as necessary to the administration of justice.

This bill would authorize the disclosure of the above information and records to a state civil service employee against whom an adverse action has been filed as necessary to defend against the action if certain conditions are met.

The bill would also make technical corrections.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 4514 of the Welfare and Institutions Code is amended to read:

4514. All information and records obtained in the course of providing intake, assessment, and services under Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100) to persons with developmental disabilities shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons, whether employed by a regional center or state developmental center, or not, in the provision of intake, assessment, and services or appropriate referrals. The consent of the person with a developmental disability, or his or her guardian or conservator, shall be obtained before information or records may be disclosed by regional center or state developmental center personnel to a professional not employed by the regional center or state developmental center, or a program not vendored by a regional center or state developmental center.

(b) When the person with a developmental disability, who has the capacity to give informed consent, designates individuals to whom information or records may be released, except that nothing in this chapter shall be construed to compel a physician, psychologist, social worker, marriage and family therapist, nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(c) To the extent necessary for a claim, or for a claim or application to be made on behalf of a person with a developmental disability for aid, insurance, government benefit, or medical assistance to which he or she may be entitled.

(d) If the person with a developmental disability is a minor, ward, or conservatee, and his or her parent, guardian, conservator, or limited conservator with access to confidential records, designates, in writing, persons to whom records or information

1 may be disclosed, except that nothing in this chapter shall be
2 construed to compel a physician, psychologist, social worker,
3 marriage and family therapist, nurse, attorney, or other
4 professional to reveal information that has been given to him or her
5 in confidence by a family member of the person unless a valid
6 release has been executed by that family member.

7 (e) For research, provided that the Director of Developmental
8 Services designates by regulation rules for the conduct of research
9 and requires the research to be first reviewed by the appropriate
10 institutional review board or boards. These rules shall include, but
11 need not be limited to, the requirement that all researchers shall
12 sign an oath of confidentiality as follows:

13
14 “ _____
15 Date

16
17 As a condition of doing research concerning persons with
18 developmental disabilities who have received services from ____
19 (fill in the facility, agency or person), I, ____, agree to obtain the
20 prior informed consent of persons who have received services to
21 the maximum degree possible as determined by the appropriate
22 institutional review board or boards for protection of human
23 subjects reviewing my research, or the person’s parent, guardian,
24 or conservator, and I further agree not to divulge any information
25 obtained in the course of the research to unauthorized persons, and
26 not to publish or otherwise make public any information regarding
27 persons who have received services so those persons who received
28 services are identifiable.

29 I recognize that the unauthorized release of confidential
30 information may make me subject to a civil action under
31 provisions of the Welfare and Institutions Code.

32
33 _____”
34 Signed

35
36 (f) To the courts, as necessary to the administration of justice.

37 (g) To governmental law enforcement agencies as needed for
38 the protection of federal and state elective constitutional officers
39 and their families.



1 (h) To the Senate Committee on Rules or the Assembly
2 Committee on Rules for the purposes of legislative investigation
3 authorized by the committee.

4 (i) To the courts and designated parties as part of a regional
5 center report or assessment in compliance with a statutory or
6 regulatory requirement, including, but not limited to, Section
7 1827.5 of the Probate Code, Sections 1001.22 and 1370.1 of the
8 Penal Code, Section 6502 of the Welfare and Institutions Code,
9 and Section 56557 of Title 17 of the California Code of
10 Regulations.

11 (j) To the attorney for the person with a developmental
12 disability in any and all proceedings upon presentation of a release
13 of information signed by the person, except that when the person
14 lacks the capacity to give informed consent, the regional center or
15 state developmental center director or designee, upon satisfying
16 himself or herself of the identity of the attorney, and of the fact that
17 the attorney represents the person, shall release all information and
18 records relating to the person except that nothing in this article
19 shall be construed to compel a physician, psychologist, social
20 worker, marriage and family therapist, nurse, attorney, or other
21 professional to reveal information that has been given to him or her
22 in confidence by a family member of the person unless a valid
23 release has been executed by that family member.

24 (k) Upon written consent by a person with a developmental
25 disability previously or presently receiving services from a
26 regional center or state developmental center, the director of the
27 regional center or state developmental center, or his or her
28 designee, may release any information, except information that
29 has been given in confidence by members of the family of the
30 person with developmental disabilities, requested by a probation
31 officer charged with the evaluation of the person after his or her
32 conviction of a crime if the regional center or state developmental
33 center director or designee determines that the information is
34 relevant to the evaluation. The consent shall only be operative until
35 sentence is passed on the crime of which the person was convicted.
36 The confidential information released pursuant to this subdivision
37 shall be transmitted to the court separately from the probation
38 report and shall not be placed in the probation report. The
39 confidential information shall remain confidential except for

purposes of sentencing. After sentencing, the confidential information shall be sealed.

(l) Between persons who are trained and qualified to serve on “multidisciplinary personnel” teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

(m) When a person with a developmental disability dies from any cause, natural or otherwise, while hospitalized in a state developmental center, the State Department of Developmental Services, the physician in charge of the client, or the professional in charge of the facility or his or her designee, shall release information and records to the coroner. The State Department of Developmental Services, the physician in charge of the client, or the professional in charge of the facility or his or her designee, shall not release any notes, summaries, transcripts, tapes, or records of conversations between the resident and health professional personnel of the hospital relating to the personal life of the resident that is not related to the diagnosis and treatment of the resident’s physical condition. Any information released to the coroner pursuant to this section shall remain confidential and shall be sealed and shall not be made part of the public record.

(n) To authorized licensing personnel who are employed by, or who are authorized representatives of, the State Department of Health Services, and who are licensed or registered health professionals, and to authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate health facilities and community care facilities, and to ensure that the standards of care and services provided in these facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facility is subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 2 (commencing with Section 1250) and Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code, or a criminal, civil, or

1 administrative proceeding in relation thereto. The confidential
2 information may be used by the State Department of Health
3 Services or the State Department of Social Services in a criminal,
4 civil, or administrative proceeding. The confidential information
5 shall be available only to the judge or hearing officer and to the
6 parties to the case. Names which are confidential shall be listed in
7 attachments separate to the general pleadings. The confidential
8 information shall be sealed after the conclusion of the criminal,
9 civil, or administrative hearings, and shall not subsequently be
10 released except in accordance with this subdivision. If the
11 confidential information does not result in a criminal, civil, or
12 administrative proceeding, it shall be sealed after the State
13 Department of Health Services or the State Department of Social
14 Services decides that no further action will be taken in the matter
15 of suspected licensing violations. Except as otherwise provided in
16 this subdivision, confidential information in the possession of the
17 State Department of Health Services or the State Department of
18 Social Services shall not contain the name of the person with a
19 developmental disability.

20 (o) To any board which licenses and certifies professionals in
21 the fields of mental health and developmental disabilities pursuant
22 to state law, when the Director of Developmental Services has
23 reasonable cause to believe that there has occurred a violation of
24 any provision of law subject to the jurisdiction of a board and the
25 records are relevant to the violation. The information shall be
26 sealed after a decision is reached in the matter of the suspected
27 violation, and shall not subsequently be released except in
28 accordance with this subdivision. Confidential information in the
29 possession of the board shall not contain the name of the person
30 with a developmental disability.

31 (p) To governmental law enforcement agencies by the director
32 of a regional center or state developmental center, or his or her
33 designee, when (1) the person with a developmental disability has
34 been reported lost or missing or (2) there is probable cause to
35 believe that a person with a developmental disability has
36 committed, or has been the victim of, murder, manslaughter,
37 mayhem, aggravated mayhem, kidnapping, robbery, carjacking,
38 assault with the intent to commit a felony, arson, extortion, rape,
39 forcible sodomy, forcible oral copulation, assault or battery, or



1 unlawful possession of a weapon, as provided in Section 12020 of
2 the Penal Code.

3 This subdivision shall be limited solely to information directly
4 relating to the factual circumstances of the commission of the
5 enumerated offenses and shall not include any information
6 relating to the mental state of the patient or the circumstances of
7 his or her treatment unless relevant to the crime involved.

8 This subdivision shall not be construed as an exception to, or in
9 any other way affecting, the provisions of Article 7 (commencing
10 with Section 1010) of Chapter 4 of Division 8 of the Evidence
11 Code, or Chapter 11 (commencing with Section 15600) and
12 Chapter 13 (commencing with Section 15750) of Part 3 of
13 Division 9.

14 (q) To the Youth Authority and Adult Correctional Agency or
15 any component thereof, as necessary to the administration of
16 justice.

17 (r) To an agency mandated to investigate a report of abuse filed
18 pursuant to either Section 11164 of the Penal Code or Section
19 15630 of the Welfare and Institutions Code for the purposes of
20 either a mandated or voluntary report or when those agencies
21 request information in the course of conducting their
22 investigation.

23 (s) When a person with developmental disabilities, or the
24 parent, guardian, or conservator of a person with developmental
25 disabilities who lacks capacity to consent, fails to grant or deny a
26 request by a regional center or state developmental center to
27 release information or records relating to the person with
28 developmental disabilities within a reasonable period of time, the
29 director of the regional or developmental center, or his or her
30 designee, may release information or records on behalf of that
31 person provided both of the following conditions are met:

32 (1) Release of the information or records is deemed necessary
33 to protect the person's health, safety, or welfare.

34 (2) The person, or the person's parent, guardian, or
35 conservator, has been advised annually in writing of the policy of
36 the regional center or state developmental center for release of
37 confidential client information or records when the person with
38 developmental disabilities, or the person's parent, guardian, or
39 conservator, fails to respond to a request for release of the
40 information or records within a reasonable period of time. A

1 statement of policy contained in the client's individual program
2 plan shall be deemed to comply with the notice requirement of this
3 paragraph.

4 (t) (1) When an employee is served with a notice of adverse
5 action, as defined in Section 19570 of the Government Code, the
6 following information and records may be released:

7 (A) All information and records that the appointing authority
8 relied upon in issuing the notice of adverse action.

9 (B) All other information and records that are relevant to the
10 adverse action, or that would constitute relevant evidence as
11 defined in Section 210 of the Evidence Code.

12 (C) The information described in subparagraphs (A) and (B)
13 may be released only if both *of* the following conditions are met:

14 (i) The appointing authority has provided written notice to the
15 consumer and the consumer's legal representative or, if the
16 consumer has no legal representative *or if the legal representative*
17 *is a state agency*, to the clients' rights advocate, and the consumer,
18 the consumer's legal representative, or the clients' rights advocate
19 has not objected in writing to the appointing authority within five
20 *business* days of receipt of the notice, or the appointing authority,
21 upon review of the objection has determined that the
22 circumstances on which the adverse action is based are egregious
23 or threaten the health, safety, or life of the consumer or other
24 consumers and without the information the adverse action could
25 not be taken.

26 (ii) The appointing authority, the person against whom the
27 adverse action has been taken, and the person's representative, if
28 any, have entered into a stipulation that does all of the following:

29 (I) Prohibits the parties from disclosing or using the
30 information or records for any purpose other than the proceedings
31 for which the information or records were requested or provided.

32 (II) Requires the employee and the employee's legal
33 representative to return to the appointing authority all records
34 provided to them under this subdivision, including, but not limited
35 to, all records and documents or copies thereof that are ~~not~~ *no*
36 longer in the possession of the employee or the employee's legal
37 representative because they were from any source containing
38 confidential information protected by this section, and all copies
39 of those records and documents, within 10 days of the date that the
40 adverse action becomes final except for the actual records and



1 documents submitted to the administrative tribunal as a
2 component of an appeal from the adverse action.

3 (III) Requires the parties to submit the stipulation to the
4 administrative tribunal with jurisdiction over the adverse action at
5 the earliest possible opportunity.

6 (2) For the purposes of this subdivision, the State Personnel
7 Board may, prior to any appeal from adverse action being filed
8 with it, issue a protective order, upon application by the appointing
9 authority, for the limited purpose of prohibiting the parties from
10 disclosing or using information or records for any purpose other
11 than the proceeding for which the information or records were
12 requested or provided, and to require the employee or the
13 employee's legal representative to return to the appointing
14 authority all records provided to them under this subdivision,
15 including, but not limited to, all records and documents from any
16 source containing confidential information protected by this
17 section, and all copies of those records and documents, within 10
18 days of the date that the adverse action becomes final, except for
19 the actual records and documents that are no longer in the
20 possession of the employee or the employee's legal representatives
21 because they were submitted to the administrative tribunal as a
22 component of an appeal from the adverse action.

23 (3) Individual identifiers, including, but not limited to, names,
24 social security numbers, and hospital numbers, that are not
25 necessary for the prosecution or defense of the adverse action,
26 shall not be disclosed.

27 (4) All records, documents, or other materials containing
28 confidential information protected by this section that have been
29 submitted or otherwise disclosed to the administrative agency or
30 other person as a component of an appeal from an adverse action
31 shall, upon proper motion by the appointing authority to the
32 administrative tribunal, be placed under administrative seal and
33 shall not, thereafter, be subject to disclosure to any person or entity
34 except upon the issuance of an order of a court of competent
35 jurisdiction.

36 (5) For purposes of this subdivision, an adverse action becomes
37 final when the employee fails to answer within the time specified
38 in Section 19575 of the Government Code, or, after filing an
39 answer, withdraws the appeal, or, upon exhaustion of the



1 administrative appeal or of the judicial review remedies as
2 otherwise provided by law.

3 SEC. 2. Section 5328 of the Welfare and Institutions Code is
4 amended to read:

5 5328. All information and records obtained in the course of
6 providing services under Division 4 (commencing with Section
7 4000), Division 4.1 (commencing with Section 4400), Division
8 4.5 (commencing with Section 4500), Division 5 (commencing
9 with Section 5000), Division 6 (commencing with Section 6000),
10 or Division 7 (commencing with Section 7100), to either voluntary
11 or involuntary recipients of services shall be confidential.
12 Information and records obtained in the course of providing
13 similar services to either voluntary or involuntary recipients prior
14 to 1969 shall also be confidential. Information and records shall be
15 disclosed only in any of the following cases:

16 (a) In communications between qualified professional persons
17 in the provision of services or appropriate referrals, or in the course
18 of conservatorship proceedings. The consent of the patient, or his
19 or her guardian or conservator shall be obtained before
20 information or records may be disclosed by a professional person
21 employed by a facility to a professional person not employed by
22 the facility who does not have the medical or psychological
23 responsibility for the patient's care.

24 (b) When the patient, with the approval of the physician,
25 licensed psychologist, social worker with a master's degree in
26 social work, or licensed marriage and family therapist, who is in
27 charge of the patient, designates persons to whom information or
28 records may be released, except that nothing in this article shall be
29 construed to compel a physician, licensed psychologist, social
30 worker with a master's degree in social work, licensed marriage
31 and family therapist, nurse, attorney, or other professional person
32 to reveal information that has been given to him or her in
33 confidence by members of a patient's family. Nothing in this
34 subdivision shall be construed to authorize a licensed marriage and
35 family therapist to provide services or to be in charge of a patient's
36 care beyond his or her lawful scope of practice.

37 (c) To the extent necessary for a recipient to make a claim, or
38 for a claim to be made on behalf of a recipient for aid, insurance,
39 or medical assistance to which he or she may be entitled.



(d) If the recipient of services is a minor, ward, or conservatee, and his or her parent, guardian, guardian ad litem, or conservator designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.

(e) For research, provided that the Director of Mental Health or the Director of Developmental Services designates by regulation, rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. The rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

Date

As a condition of doing research concerning persons who have received services from ____ (fill in the facility, agency or person), I, ____, agree to obtain the prior informed consent of such persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, and I further agree not to divulge any information obtained in the course of such research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services such that the person who received services is identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

1 (h) To the Senate Committee on Rules or the Assembly
2 Committee on Rules for the purposes of legislative investigation
3 authorized by the committee.

4 (i) If the recipient of services who applies for life or disability
5 insurance designates in writing the insurer to which records or
6 information may be disclosed.

7 (j) To the attorney for the patient in any and all proceedings
8 upon presentation of a release of information signed by the patient,
9 except that when the patient is unable to sign the release, the staff
10 of the facility, upon satisfying itself of the identity of the attorney,
11 and of the fact that the attorney does represent the interests of the
12 patient, may release all information and records relating to the
13 patient except that nothing in this article shall be construed to
14 compel a physician, licensed psychologist, social worker with a
15 master's degree in social work, licensed marriage and family
16 therapist, nurse, attorney, or other professional person to reveal
17 information that has been given to him or her in confidence by
18 members of a patient's family.

19 (k) Upon written agreement by a person previously confined in
20 or otherwise treated by a facility, the professional person in charge
21 of the facility or his or her designee may release any information,
22 except information that has been given in confidence by members
23 of the person's family, requested by a probation officer charged
24 with the evaluation of the person after his or her conviction of a
25 crime if the professional person in charge of the facility determines
26 that the information is relevant to the evaluation. The agreement
27 shall only be operative until sentence is passed on the crime of
28 which the person was convicted. The confidential information
29 released pursuant to this subdivision shall be transmitted to the
30 court separately from the probation report and shall not be placed
31 in the probation report. The confidential information shall remain
32 confidential except for purposes of sentencing. After sentencing,
33 the confidential information shall be sealed.

34 (l) Between persons who are trained and qualified to serve on
35 multidisciplinary personnel teams pursuant to subdivision (d) of
36 Section 18951. The information and records sought to be disclosed
37 shall be relevant to the prevention, identification, management, or
38 treatment of an abused child and his or her parents pursuant to
39 Chapter 11 (commencing with Section 18950) of Part 6 of
40 Division 9.



1 (m) To county patients' rights advocates who have been given
2 knowing voluntary authorization by a client or a guardian ad litem.
3 The client or guardian ad litem, whoever entered into the
4 agreement, may revoke the authorization at any time, either in
5 writing or by oral declaration to an approved advocate.

6 (n) To a committee established in compliance with Section
7 4070.

8 (o) In providing information as described in Section 7325.5.
9 Nothing in this subdivision shall permit the release of any
10 information other than that described in Section 7325.5.

11 (p) To the county mental health director or the director's
12 designee, or to a law enforcement officer, or to the person
13 designated by a law enforcement agency, pursuant to Sections
14 5152.1 and 5250.1.

15 (q) If the patient gives his or her consent, information
16 specifically pertaining to the existence of genetically
17 handicapping conditions, as defined in Section 125135 of the
18 Health and Safety Code, may be released to qualified professional
19 persons for purposes of genetic counseling for blood relatives
20 upon request of the blood relative. For purposes of this
21 subdivision, "qualified professional persons" means those
22 persons with the qualifications necessary to carry out the genetic
23 counseling duties under this subdivision as determined by the
24 genetic disease unit established in the State Department of Health
25 Services under Section 125000 of the Health and Safety Code. If
26 the patient does not respond or cannot respond to a request for
27 permission to release information pursuant to this subdivision
28 after reasonable attempts have been made over a two-week period
29 to get a response, the information may be released upon request of
30 the blood relative.

31 (r) When the patient, in the opinion of his or her
32 psychotherapist, presents a serious danger of violence to a
33 reasonably foreseeable victim or victims, then any of the
34 information or records specified in this section may be released to
35 that person or persons and to law enforcement agencies as the
36 psychotherapist determines is needed for the protection of that
37 person or persons. For purposes of this subdivision,
38 "psychotherapist" means anyone so defined within Section 1010
39 of the Evidence Code.

(s) (1) To the designated officer of an emergency response employee, and from that designated officer to an emergency response employee regarding possible exposure to HIV or AIDS, but only to the extent necessary to comply with provisions of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(2) For purposes of this subdivision, “designated officer” and “emergency response employee” have the same meaning as these terms are used in the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(3) The designated officer shall be subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV results. Further, the designated officer shall inform the exposed emergency response employee that the employee is also subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV test results.

(t) (1) To a law enforcement officer who personally lodges with a facility, as defined in paragraph (2), a warrant of arrest or an abstract of such a warrant showing that the person sought is wanted for a serious felony, as defined in Section 1192.7 of the Penal Code, or a violent felony, as defined in Section 667.5 of the Penal Code. The information sought and released shall be limited to whether or not the person named in the arrest warrant is presently confined in the facility. This paragraph shall be implemented with minimum disruption to health facility operations and patients, in accordance with Section 5212. If the law enforcement officer is informed that the person named in the warrant is confined in the facility, the officer may not enter the facility to arrest the person without obtaining a valid search warrant or the permission of staff of the facility.

(2) For purposes of paragraph (1), a facility means all of the following:

(A) A state hospital, as defined in Section 4001.

(B) A general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, solely with regard to information pertaining to a mentally disordered person subject to this section.

(C) An acute psychiatric hospital, as defined in subdivision (b) of Section 1250 of the Health and Safety Code.

(D) A psychiatric health facility, as described in Section 1250.2 of the Health and Safety Code.

(E) A mental health rehabilitation center, as described in Section 5675.

(F) A skilled nursing facility with a special treatment program for chronically mentally disordered patients, as described in Sections 51335 and 72445 to 72475, inclusive, of Title 22 of the California Code of Regulations.

(u) Between persons who are trained and qualified to serve on multidisciplinary personnel teams pursuant to Section 15610.55, 15753.5, or 15761. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused elder or dependent adult pursuant to Chapter 13 (commencing with Section 15750) of Part 3 of Division 9.

(v) The amendment of subdivision (d) enacted at the 1970 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the preexisting law.

(w) This section shall not be limited by Section 5150.05 or 5332.

(x) (1) When an employee is served with a notice of adverse action, as defined in Section 19570 of the Government Code, the following information and records may be released:

(A) All information and records that the appointing authority relied upon in issuing the notice of adverse action.

(B) All other information and records that are relevant to the adverse action, or that would constitute relevant evidence as defined in Section 210 of the Evidence Code.

(C) The information described in subparagraphs (A) and (B) may be released only if both of the following conditions are met:

(i) The appointing authority has provided written notice to the consumer and the consumer's legal representative or, if the consumer has no legal representative *or if the legal representative is a state agency*, to the clients' rights advocate, and the consumer, the consumer's legal representative, or the clients' rights advocate has not objected in writing to the appointing authority within five *business* days of receipt of the notice, or the appointing authority, upon review of the objection has determined that the

1 circumstances on which the adverse action is based are egregious
2 or threaten the health, safety, or life of the consumer or other
3 consumers and without the information the adverse action could
4 not be taken.

5 (ii) The appointing authority, the person against whom the
6 adverse action has been taken, and the person's representative, if
7 any, have entered into a stipulation that does all of the following:

8 (I) Prohibits the parties from disclosing or using the
9 information or records for any purpose other than the proceedings
10 for which the information or records were requested or provided.

11 (II) Requires the employee and the employee's legal
12 representative to return to the appointing authority all records
13 provided to them under this subdivision, including, but not limited
14 to, all records and documents from any source containing
15 confidential information protected by this section, and all copies
16 of those records and documents, within 10 days of the date that the
17 adverse action becomes final except for the actual records and
18 documents or copies thereof that are no longer in the possession
19 of the employee or the employee's legal representative because
20 they were submitted to the administrative tribunal as a component
21 of an appeal from the adverse action.

22 (III) Requires the parties to submit the stipulation to the
23 administrative tribunal with jurisdiction over the adverse action at
24 the earliest possible opportunity.

25 (2) For the purposes of this subdivision, the State Personnel
26 Board may, prior to any appeal from adverse action being filed
27 with it, issue a protective order, upon application by the appointing
28 authority, for the limited purpose of prohibiting the parties from
29 disclosing or using information or records for any purpose other
30 than the proceeding for which the information or records were
31 requested or provided, and to require the employee or the
32 employee's legal representative to return to the appointing
33 authority all records provided to them under this subdivision,
34 including, but not limited to, all records and documents from any
35 source containing confidential information protected by this
36 section, and all copies of those records and documents, within 10
37 days of the date that the adverse action becomes final, except for
38 the actual records and documents or copies thereof that are no
39 longer in the possession of the employee or the employee's legal

1 representatives because they were submitted to the administrative
2 tribunal as a component of an appeal from the adverse action.

3 (3) Individual identifiers, including, but not limited to, names,
4 social security numbers, and hospital numbers, that are not
5 necessary for the prosecution or defense of the adverse action,
6 shall not be disclosed.

7 (4) All records, documents, or other materials containing
8 confidential information protected by this section that has been
9 submitted or otherwise disclosed to the administrative agency or
10 other person as a component of an appeal from an adverse action
11 shall, upon proper motion by the appointing authority to the
12 administrative tribunal, be placed under administrative seal and
13 shall not, thereafter, be subject to disclosure to any person or entity
14 except upon the issuance of an order of a court of competent
15 jurisdiction.

16 (5) For purposes of this subdivision, an adverse action becomes
17 final when the employee fails to answer within the time specified
18 in Section 19575 of the Government Code, or, after filing an
19 answer, withdraws the appeal, or, upon exhaustion of the
20 administrative appeal or of the judicial review remedies as
21 otherwise provided by law.

